UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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RHONDA RODRIGUEZ,

Plaintiff,

v.

WANDA RIVERA, DAWN PERKINS, D. WISDOM, JANE DOE, M.D., WESTCHESTER COUNTY AND ODYSSEY HOUSE, INC.,

Defendants.
---x

12-cv-5823 (PAC) (DF)

VERIFIED COMPLAINT

JURY TRIAL DEMANDED

Plaintiff RHONDA RODRIGUEZ, by and through her attorney Michael A. Deem, Esq., states as follows:

PRELIMINARY STATEMENT

1. This is a combined civil rights and personal injury action. The claims arise from the deliberate indifference to plaintiff's serious medical needs while an inpatient in Odyssey House, to which she was assigned by the Westchester County Department of Social Services ("DSS"). Odyssey House was contaminated with black mold, causing plaintiff to be hospitalized six times due to severe difficulty breathing, over the course of approximately ninety days. Plaintiff was compelled to remain in Odyssey House under threat of "non-compliance" and "sanctions" by defendants Rivera and DSS, even after being diagnosed as highly allergic to black mold, after defendant Rivera was advised of plaintiff's repeated hospitalizations, and after defendant Perkins was directed to inspect the facilities at Odyssey House by a Westchester County Family Court Referee. Plaintiff developed Chronic Obstructive Pulmonary Disease ("COPD") as a result of defendants' misconduct.

JURISDICTION

2. This Court has federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 over claims arising from: the Civil Rights Act of 1871; 42 U.S.C. § 1983; and the Eighth and Fourteenth Amendments of the U.S. Constitution.

3. Supplemental jurisdiction pursuant to 28 U.S.C. § 1367 exists for claims of: medical negligence; negligence, gross negligence; *respondeat superior*; and third party beneficiary breach of contract.

VENUE

4. Pursuant to 28 U.S.C. § 1391(b)(2), venue is proper in the Southern District of New York, the judicial district in which a substantial part of the events or omissions giving rise to the claims occurred.

JOINT LIABILITY

5. This action falls within one or more of the exceptions set forth in CPLR § 1602.

PARTIES

6. Plaintiff RHONDA RODRIGUEZ, was at all times relevant, a citizen and resident of the State of New York.

7. Defendant WANDA RIVERA, was at all times relevant, employed by DSS as a Credentialed Alcoholism and Substance Abuse Counselor ("CASAC"). She is sued individually.

8. Defendant DAWN PERKINS, was at all times relevant, employed by DSS as a CASAC. She is sued individually.

9. Defendant D. WISDOM, was at all times relevant, employed by Odyssey House as a CASAC. She is sued individually.

10. Defendant JANE DOE, M.D., was at all times relevant, employed by Odyssey House to provide medical care to in-patients. She is sued individually.

11. Defendant WESTCHESTER COUNTY, was at all times relevant, a municipal corporate subdivision of the State of New York, responsible for the policies, customs and practices of the Westchester County Department of Social Services ("DSS").

12. Defendant ODYSSEY HOUSE, INC., was at all times relevant, organized as a non-profit corporation for the provision of in-patient counseling and/or treatment for alcohol and substance abuse with its principle place of business located in New York, New York. It is sued in its corporate capacity and as a joint actor acting under color of law.

FACTS

13. In or about March 2011, plaintiff was a client of the New Focus Program, a drug treatment program, under the auspices of DSS. Plaintiff informed DSS that she had a history of severe asthma during the intake process.

14. On information and belief, Westchester County entered into a contract with Odyssey House to provide in-patient alcohol and substance abuse counseling and/or counseling to residents of Westchester County. Said contract required Odyssey House to provide safe and habitable housing accommodations pursuant to New York state and local laws.

15. In or about March 2011, plaintiff was placed in Odyssey House by DSS, pursuant to said contract. Plaintiff informed Odyssey House that she had a history of severe asthma during the intake process.

16. On information and belief, at that time of plaintiff's intake Odyssey House policy level officials knew or should have known that black mold was prevalent throughout its facilities on Ward's Island and at 121st Street, New York, New York.

17. After the intake process at Ward's Island plaintiff suffered a sudden onset of severe difficulty breathing and was rushed to a local hospital. She spent approximately one week in ICU and was intubated. Plaintiff was discharged back to Odyssey House, Ward's Island.

18. The restroom in plaintiff's housing area was contaminated with black mold on the walls and ceiling. Plaintiff was transported to a local hospital a *second* time due to severe difficulty breathing shortly after returning Ward's Island. Plaintiff subsequently was discharged, transferred back to Ward's Island, and assigned to the same room.

19. Plaintiff was transported to a local hospital a *third* time due to severe difficulty breathing shortly after returning to Ward's Island. Plaintiff subsequently was discharged and transferred to Odyssey House, The Manor, 121st Street, New York, NY. Black mold was visible on the ceiling, walls and ventilation system in the room in which plaintiff was housed.

20. Plaintiff was transported to a local hospital a *fourth* time due to severe difficulty breathing shortly after being assigned to The Manor. Plaintiff subsequently was discharged, transferred back to The Manor, and assigned to the same room.

21. On information and belief, Ms. Wisdom spoke to Ms. Rivera after plaintiff's third or fourth hospitalization. Ms. Wisdom explained plaintiff's medical history, repeated hospitalizations and living conditions at The Manor, including black mold, to Ms. Rivera, and recommended that plaintiff be transferred out of Odyssey House due to same. Ms. Rivera replied that if plaintiff left Odyssey House she would be in "non-compliance" and would be "sanctioned."

22. Plaintiff was transported to a local hospital a *fifth* time due to severe difficulty breathing shortly after returning to The Manor.

23. Plaintiff was examined by an allergist and/or environmental specialist during her fifth hospitalization. She tested positive for being highly allergic to black mold. A physician in the hospital informed plaintiff that her lungs were damaged due to repeated and prolonged exposure to black mold and the damage was irreversible. Plaintiff subsequently was discharged, transferred back to The Manor, and assigned to the same room.

24. On information and belief, the results of plaintiff's tests were forwarded to Odyssey House and Westchester County at the time or shortly after she was discharged.

25. In about May 2011, plaintiff attended a court conference in Westchester County Family Court. Plaintiff explained her medical history, repeated hospitalizations, diagnosis and living conditions at The Manor to the Court Referee and Ms. Perkins. The Referee directed Ms. Perkins to physically inspect the facilities at The Manor to determine if they were habitable and safe for plaintiff.

26. On information and belief, Ms. Perkins informed Ms. Rivera of the referee's directive, but never conducted the inspection.

27. Plaintiff was transported to a local hospital a *sixth* time due to severe difficulty breathing shortly after returning to The Manor. During plaintiff's sixth hospitalization she was diagnosed with COPD, and informed that it was caused by repeated or prolonged exposure to black mold at Odyssey House. Plaintiff subsequently was discharged, transferred back to The Manor, and assigned to the same room.

28. In about June 2011, plaintiff met with defendant Jane Doe, M.D. at The Manor to follow-up on her medical condition after her sixth hospitalization. During the visit plaintiff began to have difficulty breathing. Jane Doe, M.D. wrote a letter to Ms. Wisdom and directed that

plaintiff be transferred out of Odyssey House. Ms. Wisdom subsequently informed Ms. Rivera that Odyssey House could no longer house plaintiff and referred plaintiff back to DSS.

29. In about June 2011, plaintiff was transferred to a different facility by DSS for in-patient treatment.

30. On information and belief, plaintiff was intubated during five of her six hospitalizations due to repeated and prolonged exposure to black mold.

31. Plaintiff provided Odyssey House with her medical discharge papers after each hospitalization.

32. On information and belief, plaintiff's hospital discharge papers were reviewed by Jane Doe, M.D. and entered into her medical records at Odyssey House each time she returned.

33. On information and belief, both Odyssey House and Westchester County were provided with detailed billing statements from the local hospitals that provided medical care to plaintiff, shortly after she was discharged.

34. On information and belief, Jane Doe, M.D., Ms. Wisdom and/or Odyssey House could have referred plaintiff back to DSS for medical reasons immediately or shortly after being informed of her medical condition and medical needs by the local hospitals, but refused or failed to do so. Said refusal or failure constituted gross negligence.

35. On information and belief, Ms. Perkins should have inspected the living conditions at Odyssey House immediately after being directed to do so by the family Court Referee, and transferred plaintiff out of Odyssey House for medical reasons immediately or shortly after said inspection, but refused or failed to do so. Said refusal or failure constituted gross negligence.

36. On information and belief, Ms. Rivera could have transferred plaintiff out of Odyssey House for medical reasons immediately or shortly after being informed of her medical condition and medical needs by the local hospitals, Ms. Wisdom and/or Odyssey House, but refused or failed to do so. Said refusal or failure constituted gross negligence.

37. On information and belief, Westchester County could have transferred plaintiff out of Odyssey House for medical reasons immediately or shortly after being informed of her medical condition and medical needs by the local hospitals, Ms. Wisdom, Odyssey House and/or Ms. Rivera, but refused or failed to do so. Said refusal or failure constituted gross negligence.

38. As a direct and proximate result of the aforementioned, plaintiff suffered permanent and irreversible damage to her lungs resulting in COPD.

39. In August 2011, DSS designated plaintiff eligible for Supplemental Security Income ("SSI") due at least in part to her COPD.

40. In April 2012, DSS designated plaintiff eligible for Social Security Disability ("SSD") due at least in part to her COPD.

41. Plaintiff has been unable to return to work due to the damages she suffered.

DAMAGES

42. As a direct and proximate result of the defendants' misconduct plaintiff has or will suffer the following injuries and damages:

a. Violation of her rights as guaranteed by the Eighth and Fourteenth Amendments to the U.S. Constitution;

b. Chronic Obstructive Pulmonary Disease;

c. Needless, conscious pain and suffering;

d. Severe anxiety, emotional trauma and distress;

e. Loss of enjoyment of life;

f. Loss of employment opportunity;

g. Shortened life expectancy; and

h. Medical and pharmaceutical expenses.

43. All the acts and omissions committed by the defendants described herein for which liability is claimed were done intentionally, unlawfully, wantonly, recklessly, or with bad faith, and said acts meet all of the standards for imposition of punitive damages.

COUNT I
§ 1983 Claim for Deliberate Indifference to Serious Medical Needs Against Rivera, Perkins and Odyssey House

44. Plaintiff hereby incorporates and references all of the foregoing paragraphs and further alleges as follows:

45. Plaintiff had serious medical needs which posed an immediate and ongoing substantial risk to her health, her needs were not attended to because of defendants Rivera and Perkins' deliberate indifference to those needs, and the defendants were acting under color of law.

46. Plaintiff had serious medical needs which posed an immediate and ongoing substantial risk to her health, her needs were not attended to because of defendant Odyssey House's deliberate indifference to those needs, and the defendant was a joint actor with Westchester County acting under color of law.

47. As a result plaintiff suffered the damages set forth above.

COUNT II
Pendent Claim for Medical Negligence Against Jane Doe, M.D.

48. Plaintiff hereby incorporates and references all of the foregoing paragraphs and further alleges as follows:

49. Defendant owed a duty to protect and care for plaintiff's medical needs.

50. Defendant breached her duty by refusing or failing to refer her back to DSS or informing Odyssey House that plaintiff should be transferred to a different facility, prior to her sixth hospitalization.

51. Said breach of duty was the direct and proximate cause of plaintiff's damages.

COUNT III
Pendent Claim for Negligence Against D. Wisdom and Odyssey House

52. Plaintiff hereby incorporates and references all of the foregoing paragraphs and further alleges as follows:

53. Defendants owed a duty to protect and care for plaintiff, and to take steps that an ordinarily reasonable and prudent person would have pursued to protect and care for plaintiff.

54. Odyssey House had a duty to maintain its facilities free from hazardous conditions, including black mold.

55. Defendants breached their duty by failing to protect and care for plaintiff, by not referring her back to DSS prior to her sixth hospitalization, and by failing to maintain Odyssey House facilities free from hazardous conditions such as black mold.

56. Said breaches of duty were the direct and proximate cause of plaintiff's damages.

COUNT IV
Pendent Claim for Gross Negligence Against All Defendants

57. Plaintiff hereby incorporates and references all of the foregoing paragraphs and further alleges as follows:

58. Defendants Rivera, Perkins and Westchester County also owed a duty to protect and care for plaintiff, and to take steps that an ordinarily reasonable and prudent person would have pursued to protect and care for plaintiff.

59. Defendants Rivera, Perkins and Westchester County breached their duty by failing to protect and care for plaintiff, by not inspecting the facilities at Odyssey House, and by not transferring plaintiff to a different facility prior to her sixth hospitalization.

60. All defendants breached their duties to protect and care for plaintiff, and said breaches were grossly negligent, willful and/or reckless.

61. Said breaches were the direct and proximate cause of plaintiff's damages.

COUNT V
Pendent Claim of *Respondeat Superior* Against Odyssey House

62. Plaintiff hereby incorporates and references all of the foregoing paragraphs and further alleges as follows:

63. Odyssey House is liable for all torts committed by Jane Doe, M.D. and D. Wisdom as they were at all times engaged generally in the business of their employer or their acts may be reasonably said to be necessary or incidental to said employment.

COUNT VI
Pendent Claim for Third Party Beneficiary Breach of Contract Against Odyssey House

64. Plaintiff hereby incorporates and references all of the foregoing paragraphs and further alleges as follows:

65. Defendant Odyssey House had a binding written contract with Westchester County for the provision of in-patient alcohol and substance abuse counseling and/or treatment, and maintaining its facilities in accordance with state and local law and free from hazardous conditions including black mold, to the residents of Westchester County which the county referred to Odyssey House, plaintiff was not a party to said contract, said contract was intended for the benefit of plaintiff, the benefits of said contract to plaintiff were immediate, and said defendant breached said contract.

66. As a result plaintiff suffered damages.

WHEREFORE, plaintiff requests the following relief:

a. Declaratory judgment that plaintiff's rights under the U.S. Constitution were violated;

b. Award compensatory damages against all defendants as the jury may determine, but no less than $5,000,000;

c. Award punitive damages against all defendants, except Westchester County, as jury may determine, but no less than $5,000,000;

d. Award presumed damages as the jury may determine.

e. Award prejudgment interest at the statutory rate of 9%.

f. Award against all defendants reasonable attorney's fees, costs, and disbursements; and

g. Such other and further relief as to the Court seems just and proper.

Dated: July 24, 2012
Ossining, New York

/s Michael A. Deem

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DECLARATION UNDER PENALTY OF PERJURY

I am the plaintiff in the above entitled action, I have read the Complaint, and declare under penalty of perjury that the foregoing is true and correct. 28 U.S.C. § 1746. Executed on July 24, 2012.

_/s Rhonda Rodriguez________
RHONDA RODRIGUEZ